

## **REMARKS**

Claims 1-24 remain pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejection in view of the remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yashiro et al. (U.S. Pat. No. 5,614,699). The rejection is respectfully traversed.

In *On Demand Machine Corp. v. Ingram Industries Inc.*, 78 USPQ 2d, 1428 (CA FC 2006), it is noted that the preamble serves to focus the reader on the invention that is being claimed. Indeed, this case cites the case cited by the Examiner in the final rejection by noting that *Kropa v. Robie* calls for an inquiry as to whether the preamble is “necessary to give life, meaning and vitality to the claims”. This is precisely the case with Applicants’ claimed invention. As in *On Demand Machine Corp.*, Applicants’ preamble serves to focus the reader on the invention that is being claimed. For example, in Applicants’ independent claim 1, the very thrust of the invention is to alter a characteristic of the exhaust gas flow for the larger ranges of acoustic frequency found in non-conventional internal combustion power sources as called for in the preamble. Indeed, each independent claim of Applicants’ instant application has a term in its body that refers back to the preamble. The entirety of the claim implements the preamble’s environment and is therefore evidence that the preamble of Applicants’ claims indeed is a limitation distinguishing them from the prior art. As pointed out previously, Yashiro et al. is totally devoid of any teaching or suggestion of use of apparatus disclosed therein in conjunction with non-conventional internal combustion power sources

exhibiting during operation larger ranges of acoustic frequency, flow rate or pressure in exhaust flow than found in conventional internal combustion power sources.

The Examiner is also directed to *General Electric Co. v. Nintendo Co.*, 50 USPQ 2d, 1910 (Fed. Cir. 1999), wherein it was held that the claim preamble did not merely state a purpose or intended use but rather the words give "life and meaning" to the claim as called for by the *Kropa* test.

Finally, the Examiner is directed to *Eaton Corp. v. Rockwell International Corp.*, 66 USPQ 2d 1271 (CA FC 2003), wherein the preamble of a method claim in that case required manipulation of particular structures or alteration of items specifically set forth in the preamble and therefore serve as an example of using both the preamble and body of the claim to define the subject matter of the claimed invention, as opposed to a preamble reciting an intended use for the invention that is defined in its entirety by the claim body. Claims 1-24 are therefore believed to be in condition for allowance over Yashiro et al. and the withdrawal of the rejection is earnestly requested.

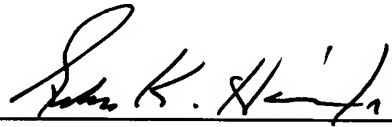
#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner

believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By:   
Gordon K. Harris, Jr.  
Reg. No. 28615

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

GKH/al